IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 585 OF 2005

R.B.B.A. Properties Pvt. Ltd. and Anr. ..Appellants

Vs.

Mumbai Building Repairs and Reconstructions Board & Anr. ..Respondents

Mr. M.K. Ghelani with Mr. Akshay Vani for Appellants.
Mr. S.W. Mattos with Ms. G.P. Mulekar, AGP for Respondents.

CORAM: B.H. MARLAPALLE, J.
Date : June 29, 2005.

P.C.:

1. Heard the learned counsel for the appellants who have approached the City Civil Court at Mumbai in the third round by filing S.C. Suit No.1741 of 2005. In the said suit Notice of Motion No.1443 of 2005 was taken out and the learned Judge of the City Civil Court at Mumbai vide his order dated 8/4/2005 held that there was no prima facie case made out by the plaintiffs for grant of ad-interim relief in terms of prayer clause (a) of the said Notice of Motion.

2. Prayer clause (a) in Notice of Motion No.1443

of 2005 reads as under :-

> (a) that pending the hearing and final disposal of the suit this Hon'ble Court be pleased to issue an injunction restraining the Defendants by themselves or through their servants or agents or otherwise from taking any steps and/or measures or acting in pursuance of and/or in any manner enforcing or implementing the show cause notice dated 21st October, 2000 bearing No.R/NOC/F-487/ MBRRB-2000/3640 issued by the 1st Defendant and/or proceeding with Case Nos. NO/SC/CA-II/28/2003 to NO/SC/CA-II/43/2003 in any manner whatsoever.

3. In the first round, the appellants had approached to the court below in S.C. Suit No.4513 of 2001 challenging the communication dated 21/10/2000 from MHADA. The learned counsel for MHADA during the course of the arguments in the said suit, on instructions, submitted that it would initiate proceedings under Section 66 read with Section 103 (j) of the MHADA Act, 1976. The trial court recorded the said statement and also put a caveat that it would not be open for the defendants to refer to the earlier events including the letter dated 21/10/2000 as well as reply the plaintiffs and/or any other correspondence which had taken place by and between the parties in such a way that it could used against

the plaintiffs in the proceedings to be initiated against the plaintiffs. It was further clarified that it would be open for the respective parties to place additional material on record before the Competent Officer. The plaintiffs, therefore, withdrew the suit. In the second round, in S.C. Suit No.1030 of 2002 another communication dated 28/3/2002 was questioned and during the course of hearing the learned counsel for MHADA reiterated that show cause notice under Section 66 read with Section 103 (j) of MHADA Act 1976 would be issued soon and, therefore, the suit was disposed as withdrawn.

4. Show cause notice dated 28/5/2004 was accordingly issued by MHADA and MHADA has also filed written statement before the Competent Officer. The plaintiffs have also filed their defence. At this stage, the plaintiffs claim to have approached the trial court in the third round because of some of the objectionable contentions raised in the written statement filed by MHADA before the Competent Officer. In fact, there was no necessity to approach the City Civil Court in the third round and it was for the

Competent Officer to consider all the records including the orders passed by the City Civil Court disposing of the earlier two civil suits. There is no reason to stay the proceedings or in any way stop the Competent Officer from hearing and deciding the proceedings initiated under Section 66 read with Section 103 (j) of the MHADA Act 1976. By way of abundant precaution it is clarified that the earlier two suits i.e. S.C. Suit No.4513 of 2001 and S.C. Suit No.1030 of 2002 were not dismissed and in fact they were withdrawn on account of the statement made by the learned counsel for MHADA that proceedings under Section 66 read with Section 103 (j) of the MHADA Act 1976 would be initiated. The Competent Officer would hear and decide the case on its own merits and without being influenced by any contentions contrary to the record.

5. Save and except the above clarifications, there is no interference called for in the impugned order passed by the learned Judge of the City Civil Court at Mumbai at the ad-interim stage. Hence, the appeal is dismissed in limine.

(B.H. Marlapalle,J.)